THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.23237 of 1995

Date: 06.09.2007

BETWEEN:

1. Abdul Rahman S/o Mohd. Chand @ Chand Saheb and others

……PETITIONER(S)

A N D

1. The State of A.P., rep. by its Secretary to Government, Home Department, Secretariat, Hyderabad and others

……RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.23237 of 1995

ORDER:

Mohd. Chand @ Chand Saheb (the deceased), father of the petitioners, was convicted under Section 304 part II IPC in S.C.No.168 of 1992 on the file of the Sessions Judge, Mahaboobnagar. He, while undergoing sentence of 10 years imprisonment passed against him in the said case, was murdered on 30.05.1994 by a co-prisoner. So, the petitioners are seeking a compensation of Rs.3,00,000/- from the State for the death of the deceased.

2. On behalf of the respondents, third respondent filed his counter affidavit admitting that the deceased was murdered by a co-convict, and denying the liability of respondents to pay compensation alleging that inasmuch as the deceased was lodged in an open prison it was difficult for the respondents to keep a watch on the movements of all the convicts.

3. The point for consideration is whether the petitioners are entitled to compensation and, if so, to what amount?

4. The contention of the learned counsel for petitioners is that since the apex Court in **SMT.KEWAL PATI v. STATE OF U.P.**[1], **R.D.UPADHYAY v. STATE OF A.P.**[2], **CHAIRMAN, RAILWAY BOARD v. CHANDRIMA DAS**[3], **STATE OF MAHARASHTRA v.**

CHRISTIAN COMMUNITY WELFARE COUNCIL OF INDIA[4] and **SHAKILA ABDUL GAFAR KHAN v. VASANT RAGHUNATH DHOBLE**[5]; and this Court in **SURAMALLA RAMULU AND OTHERS v. THE STATE OF A.P.**[6] awarded compensation in case of death in police custody, the petitioners are also entitled to a reasonable amount of compensation from the respondents.

5. The contention of the learned Government Pleader for Home is that since the incident of death of the deceased took place in an open jail, where several convicts are lodged and as the said incident seems to have taken place due to a quarrel between the deceased and a co-convict, the State had no role to play in the death of the deceased and so the State need not pay any compensation to the petitioners.

6. Since **R.D.UPADHYAY** case (2 supra) relates to a lunatic languishing in jail for 30 years, **CHANDRIMA DAS** case (3 supra) relates to a victim of a gang rape by the employees of the railways, and as **CHRISTIAN COMMUNITY WELFARE COUNCIL OF INDIA** case (4 supra), **SHAKILA ABDUL GAFAR KHAN** case (5 supra) and **SURAMALLA RAMULU** case (6 supra) relate to the death of prisoners in the police custody, the said decisions are of no help to decide the point for consideration because the question to be decided in this case is if the State can be ordered to pay compensation to the legal representatives of a victim of murdered convict by a co-convict.

7. In **SMT.KEWAL PATI** case (1 supra) the apex Court answered the question in affirmative on the ground that constitutional rights of a citizen do not cease to exist merely

because he became a prisoner, except to the extent to which he is deprived of those rights according to law and that he also is entitled to protection even in jail and if his killing taken place when he is in jail, as he was deprived of his life contrary to law, his wife and children, who are deprived of his company and affection due to his untimely death, are entitled to seek compensation from the State because of its failure to protect him.

8. Therefore, it is clear that compensation for murder of a convict in jail can be ordered, on the basis of loss of affection and deprivation of his company to the members of his family. So, what is the term for which the victim was sentenced and his age at the time of conviction and death would be relevant for arriving at the compensation payable to the legal representatives of a victim in such cases.

9. As seen from the material papers produced along with the counter affidavit filed by the respondents the deceased in this case, who was aged about 61 years, was sentenced to imprisonment for 10 years on 27.04.1993 and the un-expired portion of the sentence, after deducting remission as on 30.05.1994, was 7 years 8 months and 28 days. So, had he been alive, by the date of his release, the deceased would have been aged about 70 years, even assuming that his good conduct gets him some more remission. The previous occupation of the deceased is shown as agriculture. 1st and 2nd petitioners are the sons and 3rd petitioner is the daughter of the deceased. Their ages are shown as 34, 30 and 21 years respectively. But they did not produce any documents in proof of their ages and occupations. Keeping in view the fact that the deceased would have had served some more years of sentence and keeping in

view his age, assuming that the deceased would have survived till he attained 75 years of age and that the petitioners had lost the company and affection of the deceased for about 5 years, I am of the considered opinion that an amount of Rs.75,000/- would be a reasonable amount of compensation to the petitioners for the murder of the deceased in jail.

10. Therefore, I direct the respondents to pay Rs.75,000/- (Rupees seventy five thousand only) as compensation to the petitioners within a period of 3 months from today. In case of default, petitioners are entitled to recovery of the said amount with interest at 9% per annum from the due date till the date of recovery. Each of the petitioners are entitled to Rs.25,000/- and interest, if any. Parties are directed to bear their own costs. Advocate fee is fixed at Rs.500/- (Rupees five hundred only).

06.09.2007

Cvrk

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[1] 1995(2) SCALE 155

[2] (2001) 1 SCC 437

[3] (2000) 2 SCC 465

[4] (2003) 8 SCC 546

[5] (2003) 7 SCC 749

[6] W.P.No.19473 of 1993 dated 16.06.1995